IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMMO No. 28 of 2007

Decided on : April 23, 2007

Rajesh Kumar **…..Petitioner.**

VERSUS

State of Himachal Pradesh **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner : Mr. Suneet Goel, Advocate.

For the Respondent : Mr. Ashok Chaudhary, Additional Advocate General.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The applicant was taken into custody, as an accused, in a case, under Sections 395, 323, 411, 412, 414, 454 and 120-B of the Indian Penal Code, alongwith some other persons in four cases. He applied for becoming approver during the course of the investigation. Pardon was tendered to him.

3. The applicant has been in custody since February, 2005. Trial has now commenced in all the four cases. Statement of the applicant, as a witness, in the course of the trial has been recorded in all the cases. He has now applied for his release (on bail).

4. The submission made by the learned counsel for the applicant is that keeping the applicant in detention for too long would

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Whether the reporters of the local papers may be allowed to see the Judgment?

amount to depriving him of his liberty, even though he is no longer an accused and as an approver also his statement has been recorded. He says that since the applicant himself has sought his release, it can be presumed that he does not have any fear, apprehension or even potential threat of danger to his life at the hands of those against whom he has deposed, by turning approver. His submission is that keeping an approver in detention for too long is contrary to the spirit of justice and the Court, in exercise of its power, under Section 482 Cr.P.C., may order his release. In support of his submission, he has placed reliance upon two judicial precedents. These are Full Bench judgments of two different High Courts, namely Delhi High Court and Rajasthan High Court. The citations are: *1985 CRI. L.J. 1534 (DELHI HIGH COURT), Prem Chand v. State (FULL BENCH),* and *AIR 1987 RAJASTHAN 52, Noor Taki Alias Mammu v. State of Rajasthan (FULL BENCH).*

5. The facts of the precedent of Delhi High Court, relied upon by the learned counsel for the applicant, were that a man involved in robbery, alongwith several other persons, turned approver. He had been in detention for 2½ years. His statement, as a witness, during trial had been recorded. The Full Bench of the Delhi High Court observed that keeping in detention the approver was not going to serve any useful purpose and that his having himself applied for release indicated that there was no threat to his life or any harm to his body and that the Court, in exercise of its inherent power, under Section 482 Cr.P.C., had the jurisdiction to release him to prevent the abuse of the process of the Court and to meet the ends of justice.

Similar view has been expressed by the Rajasthan High Court in the aforesaid Full Bench judgment.

6. The facts of this case are no different from the judgment of the Delhi High Court relied upon by the learned counsel for the applicant. The applicant has been in custody for more than two years. His statement as witness in the trial has been recorded in all the four cases in which he has been tendered pardon.

7. In view of what has been stated above, keeping the applicant in detention would be too harsh for him. Therefore, he is ordered to be released on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the trial Court.

8. Application stands disposed of.

Copy *dasti.*

(Surjit Singh)
April 23, 2007(sd) **Judge.**